

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

DARRELL ROBERTS, PRO SE,
TDCJ-CID No. 1273928,

Plaintiff,

V.

KEVIN D. FOLEY, Warden;
NFN VOLGELGESANG, Facility Health
Administrator; and JUDITH THOMAS,

Defendants.

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2:16-CV-0279

ORDER DENYING PAUPER STATUS AND ORDER OF DISMISSAL

Plaintiff DARRELL ROBERTS, acting pro se and while a prisoner incarcerated in the Texas Department of Criminal Justice, Correctional Institutions Division, has filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-named defendants and has submitted an application to proceed in forma pauperis.

Under the “three strikes” provision of the Prison Litigation Reform Act, a prisoner who has had three prior civil actions or appeals, brought during detention, dismissed as frivolous, malicious, or for failure to state a claim, is barred from further proceeding in forma pauperis in such actions, unless the case fits into the narrow exception enumerated in Title 28, United States Code, section 1915(g). A prisoner who has sustained three dismissals qualifying under the “three strikes” provision may still pursue any claim, “but he or she must do so without the aid of the i.f.p. procedures.” *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996).

The Court notes that plaintiff ROBERTS has sustained at least three dismissals which fulfill the "three strikes" provision of the PLRA. Cause No. 3:08-CV-0237 was dismissed by the

United States District Court for the Western District of Texas, El Paso Division, on August 20, 2008, as frivolous for asserting claims with no arguable basis in law, and no appeal was taken; Cause No. 4:13-CV-0027 was dismissed for frivolousness by the United States District Court for the Western District of Texas, Pecos Division, on June 19, 2014, and no appeal was taken; and in Cause No. 4:14-CV-0087 the United States District Court for the Western District of Texas, Pecos Division, issued a partial dismissal against a named defendant for failure to state a claim October 26, 2015, and no appeal was taken; the plaintiff later requested voluntary dismissal of his remaining claims in that case. The plaintiff has numerous other filings in federal court where he has requested voluntary dismissal of his claims after extensive litigation and orders have issued. Plaintiff has per se abused the i.f.p. procedures; additionally, plaintiff was advised on June 19, 2014 in the dismissal order in Cause No. 4:13-CV-0027 that accrual of three strikes would bar him from proceeding in forma pauperis in future filings.

Pursuant to Title 28, United States Code, section 1915(g), the Court FINDS plaintiff DARRELL ROBERTS may not proceed in forma pauperis in any further new filings or appeals filed while a prisoner unless grounds are argued in a motion for leave which fall within the limited exception enumerated in Title 28, United States Code, section 1915(g). Even if this cause were accompanied by the necessary motion, the grounds presented in the instant suit do not fall within the statutory exception. Plaintiff has alleged no fact fulfilling the statutory exception as construed by the Fifth Circuit. *Banos v. O'Guin*, 144 F.3d 883, 885 (5th Cir. 1998).

CONCLUSION

For the reasons set forth above, plaintiff's motion to proceed in forma pauperis is DENIED.


The instant cause is DISMISSED WITHOUT PREJUDICE TO REILING WITH
PREPAYMENT OF THE FILING FEE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

All pending motions are DENIED.

IT IS SO ORDERED.

ENTERED this 9th day of February, 2017.


MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE